

REMARKS

The Examiner has determined that the restriction is proper. Applicant is slightly puzzled by the Examiner's statement that the claims are directed only to the selection of a single antibiotic. The intent of the claims was to claims the combination of any antibiotic with an enhancing quantity of citric acid. The original application demonstrates the effectiveness with two antibiotics of very different molecular structure. Tests have continued with a wide range of antibiotics to demonstrate the overall effectiveness of citrate enhancement of antibiotic drugs.

The Examiner rejected Claims 1 and 25-27 under 35 U.S.C. §103(a) as being obvious in view of **Tomita et al.** (U.S. Patent No. 5,656,591). Applicant respectfully traverses this rejection. A careful reading of the reference shows that it is directed towards combinations of lactoferrin, lactoferrin hydrolysate or antimicrobial peptides with either antibiotics (such as vancomycin) or with "other agents" which include citric acid. It is taught that antibiotics can be mixed with antimicrobial peptides (a binary mixture) to produce enhanced antimicrobial results. It is also taught that a binary mixture can be made with the peptides and one of the "other agents" which include citric acid. Ternary mixtures including peptide, antibiotic and "other agent" are also disclosed. In no cases are binary mixtures between "other agents" and antibiotics disclosed or discussed. The only data describing the effect of citric acid are presented in Table 11. There the combination of citric acid with lactoferrin hydrolysate is disclosed. Significantly, citric acid alone is shown to stimulate the growth of microbes. It is only in combination with lactoferrin that citric acid shows antimicrobial activity. There is no teaching or suggestion of combining citric acid with antibiotics to provide enhanced antimicrobial activity. Therefore, Applicant respectfully requests that the Examiner withdraw the claim rejections based on **Tomita et al.**

Although Applicant respectfully maintains that **Tomita et al.** is not an effective reference under 35 U.S.C. §103(a), that reference does raise a potential problem considering the open nature of Applicant's claims. It was the intent of the claims to claim only a binary mixture of citric acid and an antibiotic, but open claims would also encompass a ternary mixture including an additional effective agent such as the antimicrobial peptides of **Tomita et al.** Therefore, the pending claims are amended to a "closed" structure to avoid reading on such ternary mixtures.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Reexamination and reconsideration of the application, as amended, are requested.

If for any reason the Examiner still finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles telephone number listed below to discuss the steps necessary for placing the application in condition for allowance.

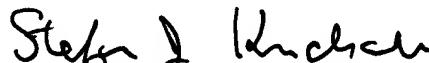
You are hereby authorized to charge any fees due and refund any surplus fees to our Deposit Account No. 50-2567.

Respectfully submitted,

REED SMITH CROSBY HEAFAY

Date: 29 September 2003

By:



Stefan J. Kirchanski
Registration No. 36,568
Attorney for Applicants

1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067
Telephone: (310) 734-5200
Facsimile: (310) 734-5299